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RQ-690

mBJ

September 21, 1993 RECEIVED

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FILE # ML 22614 93

Honorable Dan Morales  
Attorney General of Texas  
P. O. Box 12548  
Austin, TX 78711-2548

I.D.# 22614  
Fib# RQ-00690-DM  
ID# 26227

Dear General Morales:

I enclose a letter received from a citizen in Nacogdoches County requesting an opinion regarding whether there is an incompatibility of offices between county commissioner and public school trustee.

I also enclose my letter of response to the citizen which cites several attorney general opinions on the subject and concludes that an incompatibility exists. This letter also cites Chapter 19 of the Education Code as an example of the duties of a county commissioner which impinge on the operation a school district.

However, an earlier opinion, V-63 (1947), finds that there is not an incompatibility between these offices. C-43 (1963) reaffirmed this opinion in a letter written on a related subject.

Because of these conflicting opinions, I request an opinion as to whether there is an incompatibility of offices between county commissioner and trustee of an independent school district.

Thank you for your assistance.

Sincerely,

Lionel R. Meno  
Commissioner of Education

cc: H.M. Whitehead

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LEGAL SERVICES

August 5, 1993

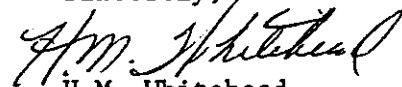
Mr. Kevin O'Hanlia:

I would appreciate a ruling by the Texas Education Agency legal service, concerning the legality of a person holding two elected positions within a county.

In may 1989 Mr. Joe Corley was elected to serve a three year term on the Cushing Independent School Board. In May 1992 he was elected to serve another threeterm also in 1992 Mr. Corley ran for and was elected to serve a four year term as County Commissioner of Precinct I of Nacogdoches County, Texas. He began serving in this cupacity in January 1993.

The Cushing Independent School District is within the boundary of Nacogdoches, County Precinct I. By serving two elected positions isn't Mr. Corley in Violetion of the law?

Sincerely,



H.M. Whitehead  
Rt. # 5, Box 2120  
Nacogdoches, Texas

75961

NOT  
PLEASE DRAFT Letter



# TEXAS EDUCATION AGENCY

1701 NORTH CONGRESS AVENUE • AUSTIN, TEXAS 78701-1494 • (512) 463-9734

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September 3, 1993

Mr. H. M. Whitehead  
Route 5, Box 2120  
Nacogdoches, Texas 75961

Dear Mr. Whitehead:

I am responding to your letter of August 5, 1993 asking whether there is an incompatibility of offices between the position of county commissioner and public school trustee when the school district boundaries lie within the county boundaries, and within the precinct which the county commissioner represents.

The common-law doctrine of incompatibility prohibits one person from holding two offices where one office might thereby subject the other body to some control. See Thomas v. Abernathy County Line Independent School District, 290 S.W. 2d 152 (Tex. Comm. App. 1927).

It is the position of TEA that an incompatibility between these offices does exist. A variety of opinions issued by the Attorney General have been reviewed in order to arrive at this conclusion.

Prominently, Opinion JM-129(1984), reaffirmed by Letter Opinion No. 93-22, dated March 12, 1993, finds that there is a conflict between holding the offices of county commissioner and community college district trustee. Two grounds for this incompatibility are cited, and these grounds apply equally to the offices of county commissioner and public school trustee. First, the county tax assessor-collector may perform the functions of assessing and collecting taxes for the school district. Second, the county commissioners may have the power to open and close roads which run across land owned by the school district.

A Letter Opinion No. 92-10, dated May 15, 1992, finding that there was not an incompatibility between the offices of county commissioner and school trustee was based upon the then existing statute "that places taxing authority in county education districts." As of September 1, 1993, county

Mr. H. M. Whitehead  
September 3, 1993  
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education districts no longer exist because of legislative action, and thus, this letter opinion no longer applies.

An additional ground for incompatibility exists in the statutes in Chapter 19 of the Education Code dealing with the creation, consolidation, and abolition of school districts. There are many functions affecting school districts which are assigned to the county commissioners by Chapter 19, including the equitable allocation of indebtedness and personal property to a district or districts which are assuming all or a portion of debts and property of another district. See TEC 19.004.

These factors cited lead the Agency to conclude that dual office holding of county commissioner and school trustee is prohibited.

However, because there is no recent Attorney General opinion which directly answers the question you have raised, we are forwarding your letter to the Attorney General and asking for an opinion.

Sincerely,



Kevin T. O'Hanlon  
Chief Counsel

cc: Dan Morales  
Attorney General of Texas